

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of K.E.M., a Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LISA K. McKAY,

Respondent-Appellant,

and

RALPH CORNELIUS BELL,

Respondent.

UNPUBLISHED
February 14, 2003

No. 239591
Wayne Circuit Court
Family Division
LC No. 00-388660

Before: Smolenski, P.J., and Wilder and Schuette, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating her parental rights to the minor child in accord with MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

I. Facts and Proceedings

In April 2000, K.E.M. came to the attention of the Family Independence Agency (FIA). A Protective Services worker and police were dispatched to investigate a report of a disturbance involving a home with an individual that was allegedly experiencing a mental and emotional breakdown. When entering the home, they found respondent unclothed and screaming. Respondent's daughter, K.E.M., then eleven years old, was also in the home, which was in complete disarray. Garbage was strewn throughout, the kitchen was filthy and overturned furniture barricaded the front door. There was no food in the house. At this time, members of respondent's family had her involuntarily committed to a psychiatric hospital for evaluation and K.E.M. went to the police station. The next day, a preliminary hearing was held wherein a referee determined that because of respondent's involuntary hospitalization, K.E.M. was left without proper care and custody. The court placed K.E.M. with her maternal aunt.

In October 2000, a bench trial commenced on the FIA's petition for temporary custody. The trial court determined that the child should be a temporary ward of the court. The court based its determination on the aforementioned incident and on respondent's chronic mental health problems and her abuse of crack cocaine. In order to regain custody of her child, respondent would have to follow the Parent Agency Agreement which required that she: (1) continue mental health therapy; (2) maintain all medications; (3) submit to a substance abuse assessment; (4) submit to weekly random drug screens; (5) attend substance abuse rehabilitation; (6) maintain a legal source of income; (7) maintain suitable housing; (8) maintain visitation with her child; and (9) attend parenting classes.

In August 2001, a dispositional review hearing was held. At that hearing, respondent's psychiatrist testified that he diagnosed respondent with schizophrenia and schizo affective disorder with paranoid aspects and that her prognosis was poor. He testified that respondent has fixed delusions such as the notion that she is "the mother of the immaculate conception," and that medication will "sometimes" control the delusional thoughts. He noted that the display of paranoia and harboring paranoid ideas about family members makes it very difficult for an individual to effectively parent.

K.E.M.'s social worker testified that K.E.M. did not wish to return to her mother's home and wanted to remain living with her aunt. K.E.M. indicated to her social worker that she loves her mother and wants to see her mother occasionally but is otherwise not confident that respondent is capable of being mentally stable on a permanent basis considering the number of times respondent relapsed. The social worker also testified that respondent did receive psychiatric care through her psychiatrist and in October 2000, she began weekly individual counseling sessions. However, in April 2001, respondent stopped individual counseling because she believed that she no longer needed the services. The social worker testified further that she referred respondent for substance abuse assessment in November 2000, but respondent did not participate and stated that she did not need substance abuse counseling.

With regard to respondent's drug use, testimony adduced at trial revealed that respondent submitted thirteen urine samples that tested positive for cocaine. Further, two of the urine samples that respondent provided during this time were diluted samples and two others were not consistent with human urine. Respondent testified that she uses cocaine "through prayer and divine intervention." Respondent stated that she ingests cocaine for medical reasons. Respondent also admitted that K.E.M. knows that she uses cocaine and that she believes that it is all right for her to ingest the substance as long as she does not do so in front of her child.

At the time of this hearing respondent was not living in a house. The basement of her house had flooded and was infested with mold rendering it unlivable. Respondent received \$14,000 to fix the house, but instead of repairing her home, respondent used the money to fund stays at various motels.

After hearing all of the testimony and considering all of the evidence, the referee rendered his oral opinion. The referee considered that, even with the existing treatments for respondent's mental illness and despite the medications that respondent took, respondent still experienced some persistent, serious delusions. The referee also noted the testimony regarding the effects that respondent's condition and behavior had on K.E.M. Further, the referee specifically referenced respondent's independent decision to discontinue individual counseling in

April 2001. The referee did acknowledge that respondent complied with portions of the Parent Agency Agreement, including maintaining psychiatric care, taking her medications and providing regular drug screens. However, despite respondent's efforts, the referee highlighted that many of respondent's drug screens were positive for cocaine and that respondent candidly admitted that she uses the drug. In addition, the referee acknowledged that respondent's home was unsuitable and that as of the date of trial, respondent did not have acceptable, permanent housing.

The referee concluded that the material allegations contained in the petition were proven by clear and convincing evidence and thus recommended termination of respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g) and (j). On October 31, 2001, respondent filed a petition to review the referee's recommendation, which the trial court affirmed. This appeal ensued.

II. Standards of Review

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993). This Court reviews the trial court's findings of fact for clear error. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been made. *Id.* Regard is given to the special ability of the trial court to judge the credibility of the witnesses who appeared before it. *Id.*

Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court is required to order termination of parental rights unless the court finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). The trial court's decision regarding the child's best interests is reviewed for clear error. *Id.*

III. Analysis

On the record presented for our review, we find that the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. *In re Miller*, *supra*. Respondent-appellant had been diagnosed with schizophrenia and schizo affective disorder and she continued to experience some persistent, serious delusions. Despite this, she self-medicated with cocaine throughout the pendency of this case and discontinued therapy because she believed that she did not need it. Her home was unsuitable when the child came into custody, and at the time of the trial, respondent-appellant did not have permanent housing.

Further, we find that the evidence did not demonstrate that termination of respondent-appellant's parental rights was antithetical to the best interests of the child. MCL 712A.19b(5); *In re Trejo*, *supra* at 356-357. Although there was a bond between respondent-appellant and her child, the twelve-year-old K.E.M. testified at trial that she did not wish to return to the instability of her mother's home and custody and preferred the stable environment of her foster home. Consequently, the trial court did not err in terminating respondent-appellant's parental rights.

Affirmed.

/s/ Michael R. Smolenski

/s/ Kurtis T. Wilder

/s/ Bill Schuette